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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,956	09/15/2003	Ian S. Malpass	09824.105008	1044
20786	7590	08/25/2004	EXAMINER	
KING & SPALDING LLP 191 PEACHTREE STREET, N.E. ATLANTA, GA 30303-1763			LONEY, DONALD J	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/662,956

Applicant(s)

MALPASS ET AL.

Examiner

Donald Loney

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-28 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 14-28 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>09/15/03, 05/17/04, 04/14/06, 01/04</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Objections

1. Claims 17,18,22 and 23 are objected to because of the following informalities: In line 1 of the above claims there is no direct antecedent basis for "the at least one layer" even though it is implied by the claim. The insertion of the phrase "containing at least one layer" after the term "material" in line 3 of claims 14 and 19 would overcome this objection. Appropriate correction is required.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 14-28 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6 and 7 of U.S. Patent No. 6726190. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both recited suction cups that are connected to the top surface of a recession formed in the bottom side of the mat.

4. Claims 14-28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6656562. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both recited suction cups that are connected to the top surface of a recession formed in the bottom side of the mat.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 14,16,19,21,24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Brewer et al (2084126).

Brewer et al discloses a mat that contains suction cups (12), which are enclosed by a cavity and/or hollow region formed in the bottom surface of a mat. Refer to figure 3 along with page 1, column 2, lines 14-55. The cavity and/or hollow region can be considered the inside of the dome (10).

7. Claims 14-17,19-22 and 24-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Bogar (3076976).

Bogar discloses a rubber mat that contains suction cups (22) formed in the recesses (21, i.e. cavity and/or hollow region) in the bottom surface thereof. Refer to figures 2 and 3 along with column 2, lines 11-32.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 18,23 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bogar.

Bogar teaches the invention substantially as recited except for the mat being formed of plastic. Bogar does teach that the mat may be formed of other materials than rubber, so as it has suitable flexibility and resilience. Refer to column 1, lines 36-40.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to Bogar to form the mat of plastic motivated by the fact that Bogar discloses that any other material having suitable flexibility and resilient properties similar to rubber can be used.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Loney whose telephone number is (571) 272-1493. The examiner can normally be reached on Mon-Fri. 8AM-4PM, maxi-flex schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1772

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Donald Loney
Primary Examiner
Art Unit 1772

DJLD.Loney
08/23/04